

DECISION – WALPOLE ZONING BOARD OF APPEALS CASE NO. 11-17

APPLICANT
PETER & LEE ANN FATALO

LOCATION OF PROPERTY INVOLVED

4 Hummingbird Lane, Walpole, MA and shown on the Assessors Map as Lot No. 35-15, Residence B Zone.

APPLICATION

A **Variance** from Section 6-B of the Zoning Bylaw to allow a detached accessory structure with a front yard setback of 8.1 feet where 30 feet is required.

On June 7, 2017 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to the granting of a **Variance** to Peter & Lee Ann Fatalo.

The following members were present and voting:

Matthew Zuker, Chairman
James S. DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member
Robert Fitzgerald, Associate member

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A motion was made by Ms. Murphy, seconded by Ms. Coffey to grant a **VARIANCE** from Section 6-B of the Zoning Bylaw to allow a detached accessory structure with a front yard setback of 8.1 feet.

The vote was **6-0-0 in favor**; therefore the application for a **Variance** is hereby **granted, subject to the following conditions:** (Zuker, DeCelle, Hiltz, Murphy, Coffey, Fitzgerald voting)

CONDITIONS:

1. The accessory shed shall be located substantially as shown on the plan entitled "4 Hummingbird Ln. Plot Plan of Land in Walpole, MA" prepared by Merrikin Engineering, LLP and dated April 10, 2017.
2. The accessory shed shall be constructed within the size range provided in the plans submitted at the public hearing.
3. Proper screening/fencing shall be maintained.

REASONS FOR DECISION:

It is the finding of the Board that the applicant was able to meet the requirements of Section 6-B. of the Zoning Bylaw. Specifically, the Board made the following findings:

- 1. Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the appellant or petitioner.***

The Board finds that the applicant has shown substantial hardship which derives from both the shape and topography of the lot. The site is a corner lot and while High Plain Street is considered its frontage, the house faces Hummingbird Lane and has a Hummingbird Lane address. As such, the zoning front yard setback of the lot actually acts as a side yard area for the driveway.

The yard area to the west and north of the house have a considerable slope several feet high, which would make placement of a shed in this area difficult, requiring more disturbance and grading. In addition, the shed would lie in close proximity to the house, which would lessen the ability of the applicant to utilize their limited side and rear yard areas.

The most practical location for the shed is at the end of the driveway, where the area is relatively level and where the applicant has direct access from the level driveway. This area is currently screened by stockade fences and trees, which will minimize visibility of the shed from outside the property.

- 2. Desirable relief may be granted without substantial detriment to the public good.***

The Board finds that desirable relief may be granted without substantial detriment to the public good as the shed in question does not impact surrounding properties in any negative way. The shed is aesthetically pleasing and lies within an area that is already screened with fencing and trees.

- 3. Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.***

The Board finds that the granting of this Variance with the above-imposed conditions does not substantially derogate from the purpose and intent of the Bylaw in that Residence B zoning is intended to provide appropriate yard area for residential use. The proposed shed lies within a location on the property which is used as a side yard for the existing house and which is appropriately screened with trees and fences. Alternative locations would diminish the applicant's ability to utilize the open space and landscape recreational areas on their corner lot and would lie in closer proximity to adjacent homes and associated yard areas.

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Consistency: This decision is consistent with purpose and intent of the Zoning By-laws.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

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Said Variance is granted pursuant to Massachusetts General Laws c. 40A, s. 10 which provides in pertinent part as follows: "If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty (30) days of the date of application thereof, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section."

Massachusetts General Laws c. 40A, s. 11. provides in pertinent part as follows:

"...No variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant."

MASSACHUSETTS GENERAL LAWS c. 40A, s. 15 PROVIDES THAT APPEALS FROM A DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO SECTION 17 OF c 40A AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Craig W. Hiltz, Clerk

CH/am

cc: Town Clerk Engineering Planning Board Applicant
 Board of Selectmen Building Inspector Conservation Commission Abutters

This decision was made on June 7, 2017 and filed with the Town Clerk on June 19, 2017.